

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: December 6, 2021)

ELIZA DEANGELIS

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v.

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C.A. No. PM-2021-6513

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KYLE WATSON, et al.

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DECISION

LANPHEAR, J. This matter came on for hearing on November 3, 2021 on Respondents’ objections to Petitioner’s Miscellaneous Petition. The Petition requests permission from the Court to take a deposition prior to filing a case-in-chief. This Decision replaces the Order issued by the Court in November 2021 which was incorrectly issued before counsel had an opportunity to submit post-hearing memoranda. Memoranda have now been submitted and reviewed.

Ms. DeAngelis alleges that she was injured by a motor vehicle driven by Mr. Watson and alleges that he was intoxicated. Prior to commencing litigation, she seeks to know the locations Mr. Watson visited on the evening of the collision, who he was with, and what he consumed. She has filed this Miscellaneous Petition asking for permission to take a deposition prior to instituting a new suit, pursuant to Rule 27(a) of the Superior Court Rules of Civil Procedure. She also seeks any videotapes of the establishments Mr. Watson visited. During oral argument on the Petition, her counsel specifically referenced video recordings, cash register receipts, and the identity of witnesses.

While Ms. DeAngelis may be able to achieve much of the same by instituting a complaint against some defendants, or by demanding that the establishments preserve evidence, it is her choice how to tactically proceed. Preserving evidence and discovery of facts and evidence is a

more courteous method of proceeding than instituting an intricate action against someone. Such a prelitigation deposition may avoid the need of bringing unnecessary parties to court. Indeed, how else would Ms. DeAngelis obtain reliable information as to where Mr. Watson may have been drinking that evening, how much he was drinking at each establishment, and when.

Counsel for Mr. Watson suggest G.L. 1956 § 9-18-12 and Rule 27(a) do not allow for such broad discovery. Rule 27(a) does not describe any limitations. Section 9-18-12 refers to “perpetuating the testimony of any witness concerning any matter which is or may be the subject of litigation[.]” Locating evidence, preserving evidence, investigating potential witnesses, and investigation of some facts may be appropriate lines of prelitigation inquiry. Such discovery may prevent the spoliation of evidence, the loss of evidence, preserve memories, and prevent unnecessary parties from being named as defendants. Counsel referenced *Travelers Insurance Co. v. Hindle*, 748 A.2d 256 (R.I. 2000), which was an attempt to search for assets before litigation. Of course, discovery of assets is normally preserved until judgment is awarded. Here, Petitioner seeks information concerning the liability and identity of potential defendants, not their wealth.

Referencing cases from other jurisdictions, Respondents suggest that Rule 27(a) is strictly limited in scope. While both Fed. R. Civ. P. 27(a) and Super. R. Civ. P. 27(a) allow for perpetuation of testimony in a ‘pre-suit’ deposition, they are not the same. The Rhode Island rule has only twenty-six words and appears to have no limitation, but for the discovery being done before litigation. The federal rule is detailed and intricate, setting forth five prerequisites for the petition, the serving officer of the petition, the method of the examination, and even its use. *See* 8A, Wright, Miller and Marcus, *Federal Practice and Procedure*, §§ 2071-2072 (3d ed.) which review the explicit requirements of the federal rule. The Rhode Island rule has no such specifications—it simply allows for such depositions. Professor Kent discusses Rhode Island Rule

27 in his original treatise *Rhode Island Practice*, 1969, at 237-240. The language is nearly identical to the treatise he co-authored in 2006, *Rhode Island Rules of Civil Procedure with Commentaries*, §§ 27:1-27:7. Neither publication references any case citation for the rule. The commentary on Rule 27 states, without reference to a case or rule, that the petition must set forth the names of the witnesses, the subject matter of the controversy, and the reason for the deposition. Those requirements are required by the federal rule, but not contained in the Rhode Island rule or statute.

Perpetuation of testimony is critical, particularly if Mr. Watson receives immunity from criminal prosecution, as discussed at hearing. It is reasonable to conclude that he will be cooperative when immunity is first given, to be able to meet any assurances of cooperation. Petitioner has justified a prompt, prelitigation deposition.

Respondents claim that Mr. Watson's deposition would directly harm his right not to incriminate himself. If he wishes to invoke his right, he is free to do so at any time. No inquiry would be allowed once the right is asserted, and this Decision is not intended to (and cannot) deprive Mr. Watson of his Constitutional rights. He is represented by counsel.

Respondents reference *Myles v. Women and Infants Hospital of R.I.*, 504 A.2d 452, 455 (R.I. 1986) for the proposition that Rule 27 is limited in scope and should not create "a fishing license that would enable plaintiff to go on an excursion[.]" In that case, Ms. Myles was seeking discovery *post* trial and pending an appeal. It is interesting to note that when our high court analyzed Rule 27(b) in *Myles*, it allowed a deposition only if the trial court "determines that it is necessary to (1) perpetuate testimony for use in the event of further proceedings and (2) avoid the failure or delay of justice." *Id.* If Mr. Watson is not immunized, the Petitioner will want to depose to preserve testimony of others and their documents while criminal proceedings are ongoing. If Mr. Watson is immunized, the Petitioner will want to depose Mr. Watson promptly, before his

promise of cooperation (and threat of prosecution) become stale. Each avenue anticipates future proceedings, is reasonable given the odd situation, and avoids a delay of justice. There is a need to perpetuate testimony, and the depositions would avoid the failure or delay of justice.

This is not an attempt to harass or delay, it is an attempt to clarify future litigation now. All parties are represented by counsel. We are fortunate that the drafters of the Rhode Island rules saw that some prelitigation depositions may be helpful in avoiding unnecessary litigation and revealing unknown facts without a full-blown lawsuit. With the federal rules in hand, the Rhode Island drafters and our Supreme Court approved a broader, open approach. No prejudice or harm has been demonstrated or suggested here.

Ms. DeAngelis, in the action at bar, is seeking to take depositions per Rule 27(a). Accordingly, the Miscellaneous Petition is granted, and the Petitioner may issue deposition subpoenas and conduct depositions.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Eliza DeAngelis v. Kyle Watson, et al.

**CASE NO:** PM-2021-6513

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** December 6, 2021

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

**For Petitioner:** Casby Harrison, III, Esq.

**For Respondents:** Amanda Prosek, Esq.; Douglas L. Price, Esq.;  
Michael R. Deluca, Esq.; Stephen J. Sypole, Esq.